

Message Text

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ACTION COME-00

INFO OCT-01 EA-11 ISO-00 AID-20 EB-11 NSC-10 RSC-01

CIEP-02 TRSE-00 SS-15 STR-08 OMB-01 CEA-02 CIAE-00

FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06 SIL-01

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R 071100Z SEP 73

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 6593

INFO USMISSION OCECD PARIS

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E.O. 11652: N/A

TAGS:

SUBJ: NEW GOJ INVESTMENT LIBRALIZATION POLICY

REF:A. STATE 161925; B. TOKYO 9908; C. TOKYO 8516;
D. MAY 7 TALKING PAPER, JAPAN'S RESTRICTIONS ON
INWARD INVESTMENT

FOLLOWING IS ADDITIONAL INFORMATION ON CURRENT GOJ PRAC-
TICES ON FOREIGN INVESTMENT REQUESTED BY REF A. REPLIES
KEYED TO NUMBERED PARAGRAPHS REF A.

1. WATANABE STATMENT RE TIME LAG BETWEEN ADOPTION OF
100 PERCENT PRICIPLE AND IMPLEMENTATION OF MODES OF
OPERATION UNDER NEW PRINCIPLE WAS, IN EMBASSY VIEW, HON-
EST ATTEMPT BY VERY EXACT BUREAUCRAT TO POINT OUT FACT
THAT ALL OF DETAILS OF GOVERNMENT PROCEDURE HAD NOT, AT
TIME HE MADE STATEMENT, BEEN FULLY WORKED OUT. FONOFF
NOW STATES THAT MODES OF OPERATION HAVE BEEN COMPLETED
AND THAT LAG REFERRED TO BY WATANABE NO LONGER EXISTS.

2. FOLLOWING ARE STEPS INVOLVED IN APPLICATION FOR AUTOMATIC
APPROVAL FOR FOREIGN INVESTMENT IN JAPAN.

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A. FOREIGN INVESTOR MAKES APPLICATION FOR APPROVAL TO INVEST TO FOREIGN CAPITAL SECTION, FOREIGN DEPARTMENT, BANK OF JAPAN. FOREIGN CAPITAL SECTION WILL PROVIDE CORRECT FORMS FOR APPLICATION AND WILL ADVISE INVESTOR OF INFORMATION REQUIRED.

B. BANK OF JAPAN REVIEWS DOCUMENTS TO SEE THAT THEY ARE COMPLETE..

C. BANK OF JAPAN CIRCULATES COMPLETED APPLICATION TO MINISTRIES CONCERNED.

D. MINISTRIES CONFIRM TO BANK OF JAPAN WHETHER OR NOT AUTOMATIC APPROVAL IS TO BE GRANTED.

E. IF AUTOMATIC APPROVAL IS GRANTED BY CONCERNED MINISTRIES, BANK OF JAPAN ISSUES A CERTIFICATE TO THIS EFFECT TO APPLICANT.

FOREIGN OFFICE HAS STATED THAT WORDING "VERYSIMILAR TO CURRENT PRACTICE" WAS ONLY CAREFUL WAY OF STATING THAT AUTOMATIC APPROVAL PROCEDURE WAS SAME AS IN PAST. PRACTICE REMAINS AS OUTLINED A THROUGH E THIS PARAGRAPH.

3. EMBOFF HAS HAD FURTHER DISCUSSION WITH FONOFF ON SUBJECT OF "TAKEOVER." IN PRINCIPLE, "TAKEOVER" WOULD MEAN ACQUISITION BY A FOREIGN INVESTOR OR GROUP OF INVESTORS OF MORE THAN 50 PERCENT OF STOCK IN AN EXISTING JAPANESE FIRM. FOR SUCH A MOVE APPROVAL OF THE JAPANESE FIRM'S BOARD OF DIRECTORS WOULD BE REQUIRED AND ALSO A DETERMINATION BY THE GOJ THAT "TAKEOVER" NOT HAVE DETRIMENTAL EFFECT ON JAPANESE ECONOMY. FOR STOCK PURCHASE BY INDIVIDUAL FOREIGN PERSON OR FIRM OF UP TO 10 PERCENT OR BY TOTAL FOREIGN INVESTORS OF LESS THAN 25 PERCENT OF STOCK IN A JAPANESE FIRM, APPROVAL BY FIRM'S BOARD OF DIRECTORS AND BY GOJ WOULD NOT BE REQUIRED. FOR PURCHASE OF MORE THAN 10 PERCENT OF A FIRM'S STOCK BY A FOREIGN PERSON OR FIRM OR MORE THAN 25 PERCENT OF A FIRM'S STOCK BY ALL FOREIGN INVESTORS, EVEN THROUGH THE TOTAL AMOUNT IN SUCH CASES IS LESS THAN 50 PERCENT AND THUS DOES NOT CONSTITUTE A UNCLASSIFIED

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TAKEOVER, APPROVAL BY THE FIRM'S BOARD OF DIRECTORS AND BY THE GOJ WILL BE REQUIRED. THUS, WHILE GOJ HAS LIBERALIZED PURCHASE OF STOCK IN EXISTING JAPANESE FIRMS BY FOREIGN INVESTORS, IT WILL STILL BE NECESSARY FOR THE FOREIGN INVESTOR TO OBTAIN APPROVAL OF BOTH THE FIRM AND THE GOJ WHEN SUCH PURCHASES EXCEED THE OLD 10 PERCENT-25 PERCENT GUIDELINES.FONOFF OFFICIAL STATES THAT THERE SHOULD BE LITTLE DIFICULTY IN SECURING APPROVAL FOR

STOCK PURCHASES WHICH EXCEED THE 10 PERCENT - 25 PERCENT LEVEL BUT FALL BELOW 50 PERCENT "TAKEOVER" LEVEL IN INDUSTRIAL SECTORS THAT HAVE BEEN FULLY LIBERALIZED. HOWEVER, APPROVAL FOR PURCHASE OF THIS MAGNITUDE WILL HAVE TO BE OBTAINED.

4. CONDITIONS FOR INVESTMENT IN NEW INDUSTRIES WHERE INVESTMENT STILL LIMITED TO 50 PERCENT ARE AS GIVEN REF B, PARA 3B. CONDITIONS ARE SAME AS THOSE CONTAINED IN OECD DOCUMENT TIR (70)4, OCTOBER 16, 1970, PP 53-54. FONOFF AGAIN CHECKED VALIDITY OF FOURTH CONDITION (SPECIFIC LIMITATIONS ON PRODUCTION AND CONDUCT OF ENTERPRISE). FONOFF STATED THAT, WHILE THIS CONDITION NOT LISTED IN TIR (70)4 SINCE IT NOT MATTER OF LEGISLATION CONDITIONS OF THIS NATURE STILL IMPOSED ON INVESTMENT IN NON-LIBERALIZED AREAS. REASON FOR THIS GIVEN AS NEED TO CONTROL CLOSELY FOREIGN INVESTMENT IN WHAT ARE MOST SENSITIVE AREAS OF JAPANESE ECONOMY. FONOFF OFFICIAL STATED THAT POSITION OF FONOFF ON THIS MATTER WAS THAT SUCH LIMITATIONS ON PRODUCTION AND CONDUCT OF ENTERPRISE SHOULD BE ABOLISHED. HE STATED THAT FONOFF HAD RECEIVED ASSURANCE FROM MITI THAT NO SUCH LIMITATIONS WOULD BE IMPOSED IN FULLY LIBERALIZED AREA, BUT THAT SAME ASSURANCE NOT GIVEN FOR AREAS STILL UNDER CONTROL REGARDING FOREIGN INVESTMENT. FONOFF OFFICIAL ALSO POINTED OUT THAT CONDITIONS IV AND V FOR CLASS I INDUSTRIES WOULD BE RETAINED BUT THAT ADMINISTRATION WOULD BE FLEXIBLE. BY WAY OF EXAMPLE, HE SAID THAT IN CASE OF MERGER OR APPROVED TAKEOVER THESE CONDITIONS WOULD NOT APPLY.

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INFO OCT-01 EUR-25 EA-11 ISO-00 AID-20 EB-11 NSC-10 RSC-01

CIEP-02 TRSE-00 SS-15 STR-08 OMB-01 CEA-02 CIAE-00

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TO SECSTATE WASHDC 6594
INFO USMISSION OECD PARIS

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5. FONOFF SPOKESMAN STATED THAT PERHAPS STATEMENT BY WATANABE HAD BEEN SOMEWHAT MISLEADING. GOJ WOULD WISH ASSURE THAT NEW FIRMS NOT ENTER JAPAN WITH INTENTION OF MOVING INTO UNRELATED FIELD OR FOR PURPOSE OF MERGER THIS STATED IN ORDER TO AVOID FUTURE DIFFICULTIES FOR SAID FIRM. HE POINTED OUT THAT EVEN UNDER AUTOMATIC APPROVAL SYSTEM NEW FIRMS WOULD ONLY BE APPROVED FOR THOSE AREAS OF ACTIVITY SHOWN IN FIRM'S APPLICATION. IF AT LATER DATE FIRM WISHED TO MOVE INTO UNRELATED AREA IT WOULD EITHER HAVE TO APPLY FOR AMENDMENT TO SCOPE OF ORIGINAL APPROVAL OR, IN SOME CASES, FILE NEW APPLICATION. IN SAME WAY, FIRM WISHING TO MERGE WITH EXISTING FIRM, EVEN ONE IN SAME FIELD, WOULD BE REQUIRED TO SEEK APPROVAL OF JAPANESE FIRM'S BOARD OF DIRECTORS AND OF GOJ PRIOR TO MAKING MERGER. THERE WOULD BE NO TIME AFTER BEGINNING OPERATIONS IN JAPAN WHEN A FOREIGN FIRM WOULD BE COMPLETELY FREE TO MOVE INTO UNRELATED AREAS OR MERGE WITH EXISTING JAPANESE FIRMS WITHOUT SOME TYPE OF PRIOR APPROVAL. FONOFF POINTED OUT THAT IF NEW FOREIGN FIRM WISHED MOVE INTO UNRELATED BUT FULL LIBERALIZED AREA OR MERGE WITH FIRM IN FULLY LIBERALIZED AREA, THEN AUTOMATIC APPROVAL PROVISIONS WOULD APPLY TO NEW UNDERTAKING.

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6. FONOFF CONFIRMED THAT TWO CONDITIONS CITED IN REF B, PARA C ARE ONLY ONES WHICH WOULD APPLY TO EQUITY INVESTMENT IN EXISTING FIRMS IN FULLY LIBERALIZED AREAS. (SEE PARA B ABOVE FOR TREATMENT OF DIFFERENT LEVELS OF EQUITY INVESTMENT.)

7. EMBASSY BELIEVES THAT ALL INFORMATION PROVIDED REFS B AND C, WITH EXCEPTION OF PERSONAL OBSERVATIONS, CAN BE USED IN PREPARING INFORMATION FOR US BUSINESS COMMUNITY. THUS PARAS 11 AND 2, REF B AND PARA 4, REF C WOULD NOT BE INCLUDED. IN ORDER PREVENT ANY POSSIBLE MISINFORMATION TO US BUSINESSMEN, EMBASSY WOULD LIKE REVIEW ANY GENERAL INFORMATION SHEET ON THIS SUBJECT IN DRAFT AND BEFORE RELEASE IN US. FYI BOJ IS PREPARING COMPREHENSIVE GUIDE ON THIS SUBJECT FOR FOREIGN COMMUNITY. WORK IS STILL IN DRAFT STAGE, BUT PUBLICATION IS EXPECTED BEFORE END OF YEAR.

8. THREE COPIES OF BANK OF TOKYO PUBLICATION ENTITLED

QTE HOWTO SET UP ENTERPRISES IN JAPAN UNQTE ALREADY SENT
TO PAUL LEINENBACH, REGIONAL MARKETING DIRECTOR JAPAN/ANZ,
OIM/BIC-232 AND SHOULD BE ARRIVING SHORTLY. EMBASSY PUR-
CHASING 2 COPIES OF QTE COMMERCIAL CODE OF JAPAN UNQTE
IN ENGLISH AND WILL POUCH TO YOU WHEN RECEIVED.
JAPANESE STANDARD INDUSTRIAL CLASSIFICATION NOT AVAILABLE
IN ENGLISH. JSIC IS IN TWO VOLUMES AND COSTS
YEN 3600 PER SET. PLEASE ADVISE IF JAPANESE LANGUAGE
COPIES OF JSIC REQUIRED.
SHOESMITH

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